

REMARKS

Claims 64-69 are pending in the instant application. Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 of United States Patent No. 7,357,917. Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-52 of United States Patent No. 6,346,229. Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-29 of United States Patent No. 6,696,040. The Office has requested clarification of claims 64 and 69. Reconsideration is respectfully requested.

First, Applicant gratefully acknowledges the indicated allowability of the instant application.

Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 of United States Patent No. 7,357,917. Applicant respectfully submits that this rejection stands traversed by virtue of the Terminal Disclaimer thereto provided with this response.

Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-52 of United States Patent No. 6,346,229. Applicant respectfully submits that this rejection stands traversed by virtue of the Terminal Disclaimer thereto provided with this response.

Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-29 of United States Patent No. 6,696,040.

Applicant respectfully submits that this rejection stands traversed by virtue of the Terminal Disclaimer thereto provided with this response.

The Office has requested clarification of claims 64 and 69 by amending the recitation of “is one of a cardiac condition and a pulmonary condition” to “is selected from a cardiac condition or a pulmonary condition”. Applicant respectfully declines for the reasons given hereinbelow.

Applicant’s phrasing (“is one of a cardiac condition and a pulmonary condition”) follows the “one of A and B” format. Applicant respectfully submits that this phrasing is an acceptable shorthand of Markush-type claiming which reads: “selected from the group consisting of A, B and C.” See *Ex parte Markush*, 1925 C.D. 126 (Comm’r Pat. 1925). MPEP §803.02. Applicant respectfully submits that claims 64 and 69 are clear as written. In support, Applicant’s undersigned counsel searched the USPTO database for patents which recited the phrase “one of” within the claims (search term: ACLM/ (“one of”). There are 2,388,465 hits returned from the search of patents with the term “one of” within the claims. While it is not possible to ascertain that each of these patents use the same format as the instant claims, Applicant can affirm that several issued patents do. See, eg, United States Patent Nos. 7,480,942; 7,480,941; and 7480,940 (ie, the first three hits returned). The claims of each of these patents employ the “one of A and B” format. Applicant respectfully submits

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that claims 64 and 69 are therefore clear as written. Reconsideration is respectfully requested.

Lastly, the Office stated claim 80 is withdrawn from further consideration per 37 CFR 1.142(b) but also requested that Applicant cancel claim 80. Applicant respectfully submits that Applicant had previously withdrawn claim 80 from the instant application so that it is no longer pending and that no further action is required. Reconsideration is respectfully requested.

In view of the foregoing, Applicant respectfully submits that the instant application, including claims 64-69, is in condition for allowance. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,

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